No. 1064

In the Supreme Court of the United States

OCTOBER TERM, 1946

THE FEDERAL CROP INSURANCE CORPORATION,
PETITIONER

v.

A. A. MERRILL AND N. D. MERRILL, CO-PARTNERS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF MERRILL BROS.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IDAHO

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	3
Statutes and regulations involved	4
Statement	4
Specification of errors to be urged	10
Reasons for granting the writ	11
Conclusion	20
Appendix	21

CITATIONS

Cases:

Alpine MacGregor v. *Westinghouse Electric & Mfg. Co.*, No. 28, this Term, decided January 6, 1947	2, 12
Bean v. *United States*, 7 F. 2d 393	19
Birmingham v. *United States*, 4 F. 2d 508	18
Cherry Cotton Mills, Inc. v. *United States*, 327 U. S. 536	16
Clallam County v. *United States*, 263 U. S. 341	16
Coleman v. *United States*, 100 F. 2d 903	19
Crawford v. *United States*, 40 F. 2d 199	18
Emergency Fleet Corp. v. *Western Union*, 275 U. S. 415	16
Federal Land Bank v. *Bismarck Lumber Co.*, 314 U. S. 95	16
Federal Land Bank of Columbia, S. C. v. *Gaines*, 290 U. S. 247	2
Felder v. *Federal Crop Insurance Corp.*, 146 F. 2d 638	15, 19
Frier v. *Federal Crop Insurance Corp.*, 152 F. 2d 149	14
Henderson v. *Nixon*, 168 p. 2d 594	14
Illinois Steel Co. v. *Baltimore & Ohio Ry. Co.*, 320 U. S. 508	2
Inland Waterways Corp. v. *Young*, 309 U. S. 517	16
Maryland Casualty Co. v. *United States*, 251 U. S. 342	15
McFall v. *Arkoosh*, 37 Idaho 243	14
Morrison v. *Hutchins*, 158 Kans. 123	14
Munro v. *United States*, 303 U. S. 36	18
Pittman v. *Home Owners' Loan Corp.*, 308 U. S. 21	16
Rodgers v. *United States*, 66 F. Supp. 663	19
Sola Electric Co. v. *Jefferson Electric Co.*, 317 U. S. 173	12
Sternfeld v. *United States*, 32 F. 2d 789	19
United States v. *Allegheny County*, 322 U. S. 174	2, 12
United States v. *Ansonia Brass & Copper Co.*, 218 U. S. 452	2
United States v. *City and County of San Francisco*, 310 U. S. 16	15

733761—47——1

Cases—Continued Page

United States v. *Loveland*, 25 F. 2d 447, reversed on other grounds, 278 U. S. 665 18
United States v. *Lyke*, 19 F. 2d 876 18
United States v. *Stewart*, 311 U. S. 60 15
United States v. *Valnds*, 81 F. 2d 615 19
United States v. *Worley*, 281 U. S. 339 18
Utah Power & Light Co. v. *United States*, 243 U. S. 389 15
White v. *United States*, 270 U. S. 175 18
Wilber National Bank v. *United States*, 69 F. 2d 526 affirmed on other grounds, 294 U. S. 120 ..... 15, 18
Yakus v. *United States*, 321 U. S. 414 14

Statutes and Regulations:

Act of February 16, 1938, c. 30, Title V, Sec. 516, 52 Stat. 72, 77, 7 U. S. C. 1516 18
Act of June 21, 1941, c. 214, Sec. 8, 55 Stat. 255, 256, 7 U. S. C., Supp. V, 1516 18
Act of December 23, 1944, c. 713, 58 Stat. 918 ..... 12, 17
Department of Agriculture Appropriation Act, 1944 (Act of July 12, 1943, 57 Stat. 392) 17
Department of Agriculture Appropriation Act, 1945 (Act of June 28, 1944, 58 Stat. 425) 17
Federal Crop Insurance Act (Act of February 16, 1938, c. 30, Title V, 52 Stat. 72, as amended by the Act of June 21, 1941, c. 214, 55 Stat. 255 and the Act of December 23, 1944, c. 713, 58 Stat. 918, 7 U. S. C., and 7 U. S. C., Supp. V, sec. 1501–1519) 2, 4, 16, 17, 18, 21
Federal Register Act (Act of July 26, 1935, c. 417, 49 Stat. 500, 44 U. S. C. 301 (et seq.):
Sec. 7 ..... 2, 20, 38
Wheat Crop Insurance Regulations (10 Fed. Reg. 1585, 10343, 14135, Part 414, Section 414 ..... 2, 4, 6, 39

Miscellaneous:

Annual Report, Secretary of Agriculture, 1943, pp. 231–235 18
Griswold, *Government in Ignorance of the Law* (1934), 48 Harv. L. Rev. 198 14
H. Doc. 150, 75th Cong., 1st Sess: Report and Recommendations of the President's Committee on Crop Insurance, pp. 2–3, 11–12 17
H. Rep. No. 1592, 78th Cong., 2d Sess 17
H. Rep. 1479, 75th Cong., 1st Sess., p. 2 18
Reorganization Plan No. 3 of 1946 (Part V), 11 Fed. Reg. 7877 9
S. Rep. No. 1298, 78th Cong., 2d Sess 17

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 1064

THE FEDERAL CROP INSURANCE CORPORATION,
PETITIONER

v.

A. A. MERRILL AND N. D. MERRILL, CO-PARTNERS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF MERRILL BROS.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IDAHO

The Acting Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Idaho entered in the above-entitled case on November 26, 1946.

OPINIONS BELOW

The opinion of the Supreme Court of the State of Idaho (R. 140–144) is reported at 174 P. 2d 834. The District Court of the Ninth Judicial District of the State of Idaho rendered no opinion.

JURISDICTION

The judgment of the Supreme Court of the State of Idaho was entered on November 26, 1946

(R. 144). The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925, on the ground that the decision denied a title, right, privilege, or immunity claimed by the Federal Crop Insurance Corporation, an agency of the United States, under the Federal Crop Insurance Act, 52 Stat. 72, as amended, 7 U. S. C., Supp. V, 1501 *et seq.*, Section 7 of the Federal Register Act, 49 Stat. 500, 502, 44 U. S. C. 307, and the Wheat Crop Insurance Regulations for 1945, 10 Fed. Reg. 1585, 10343, 14135. The cases relied upon to sustain the jurisdiction of this Court are *United States* v. *Ansonia Brass & Copper Co.*, 218 U. S. 452, 462–463; *United States* v. *Allegheny County*, 322 U. S. 174, 183; *Illinois Steel Co.* v. *Baltimore & Ohio Ry. Co.*, 320 U. S. 508, 510–511; *Federal Land Bank of Columbia, S. C.* v. *Gaines*, 290 U. S. 247; and *Alpine MacGregor* v. *Westinghouse Electric & Mfg. Co.*, No. 28, this Term, decided January 6, 1947.

Respondents brought suit in the state district court on a wheat crop insurance policy, issued by petitioner, alleging total failure of their spring wheat crop (R. 106–111). Petitioner answered that under the applicable Federal Wheat Crop Insurance Regulations, petitioner was not authorized to and had not insured the bulk of respondents' crop, consisting of spring wheat reseeded on winter wheat acreage in the 1945 crop year, and that

respondents were bound by these published regulations (R. 126–130). The same issue was raised by a previous motion to strike portions of the amended complaint (R. 124–125) and by a demurrer (R. 122) both of which were denied by the trial court; (R. 123, 125) and again by objections at the trial to the introduction of testimony concerning the disputed acreage, (R. 5–6, 7, 11, 12, 13–14, 14, 20, 68, 70–71, 79) by motions for dismissal at the close of the respondents' case (R. 81–82) and for a directed verdict (R. 87), and by requested instructions to the jury (R. 103–105), all of which were denied by the trial court. In the State Supreme Court, petitioner raised the same question in its assignments of error, in its brief, and by argument. The court below rejected the contention and ruled for respondents (R. 140–143).

The question presented is one of substance, as is more fully developed under the reasons for granting the writ (*infra*, pp. 11–19).

QUESTION PRESENTED

Were respondents entitled to recover on a Federal crop insurance policy, which incorporated by reference duly promulgated insurance regulations expressly excluding the bulk of respondents' crop from coverage and barring waivers of non-coverage by petitioner's county committees, on the ground that petitioner was "equitably estopped" from denying liability in the same way that a private insurance company

would have been, since respondents lacked actual knowledge of the applicable regulations and the county committee had been informed of the nature of the crop?

STATUTES AND REGULATIONS INVOLVED

The relevant portions of the Federal Crop Insurance Act (Act of February 16, 1938, c. 30, Title V, 52 Stat. 72, as amended, 7 U. S. C., Supp. V, 1501 *et seq.*), the Federal Register Act (Act of July 26, 1935, c. 417, 49 Stat. 500, 44 U. S. C. 301 *et seq.*), and of the Wheat Crop Insurance Regulations (10 Fed. Reg. 1585, 10343, 14135) are set forth in the Appendix, *infra*, pp. 21–40.

STATEMENT

Respondents brought suit against petitioner in a state district court in Bonneville County, Idaho, pursuant to the Federal Crop Insurance Act, 7 U. S. C. 1508 (c), *infra*, p. 30, to recover $3,960.30 on a 1945 contract of crop insurance on 460 acres of wheat which had failed (R. 106–111). By demurrer (R. 121–122) and motion to strike (R. 124–125), which were overruled by the trial court (R. 123, 125) petitioner raised the point that recovery was barred on 400 of these 460 acres by the provision of the 1945 Wheat Crop Insurance Regulations (10 Fed. Reg. 1585, 1591, Part 414, Section 414.37 (v)), expressly made part of the policy (R. 49, 113, 114), barring coverage of "spring wheat which has been reseeded on winter wheat acreage in the 1945 crop year," *infra*, p. 39. Peti-

tioner made the same allegations in its answer and denied all liability on these 400 acres on the ground that the policy did not and could not cover that portion of the crop (R. 126–130).

A jury trial was had in March 1946, and undisputed evidence was introduced that 400 of the 460 acres involved in the action consisted of spring wheat reseeded on fall planting within the regulations' prohibition of coverage (R. 9–10, 11). It was also agreed (cf. R. 92) that the insurance policy consisted of the respondents' Application which did not indicate that reseeded wheat was included (R. 111–113), the petitioner's acceptance endorsed thereon (R. 49), and the applicable Wheat Crop Insurance Regulations. Paragraph H of the Application, which respondents signed on March 26, 1945, provided that:

> It is understood and agreed that upon acceptance of the application by a duly authorized representative of the Corporation, as evidenced by his approval below, the insurance contract shall be in effect, provided the application has been submitted in accordance with the provisions of the application and the applicable Wheat Crop Insurance Regulations. It is further understood and agreed that the accepted application and the applicable Wheat Crop Insurance Regulations, including any amendments thereto, constitute the contract between the Corporation and the insured. (R. 49, 113.)

Petitioner's acceptance, dated May 28, 1945, stated that the Corporation accepted respondents' application for insurance on the 1945 spring crop, and added that "the insurance contract consists of the accepted application and the Wheat Crop Insurance Regulations, copies of which are enclosed. We suggest that you carefully read the provisions of your contract" (R. 49, 114). There was likewise no dispute that the Wheat Crop Insurance Regulations, duly published in the Federal Register on February 7, 1945, provided (a) that spring wheat reseeded on winter wheat acreage in the 1945 crop year was ineligible for insurance (10 Fed. Reg. 1591), *infra*, p. 39, and (b) that "no notice to any county committee or representative of the Corporation or knowledge possessed by any such county committee or representative or any other person shall be held to effect a waiver or change in any part of the insurance contract or to estop the Corporation from asserting any right or power under such contract; nor shall the terms of such contract be waived or changed except as authorized in writing by a duly authorized officer or representative of the Corporation" (10 Fed. Reg. 1592), *infra*, pp. 39–40.

However, respondents introduced testimony, over petitioner's objection (R. 5–6, 7, 11, 12, 13–14, 14, 20, 68, 70–71, 79), from which the jury could find that they had informed the Bonneville County Agricultural Conservation Committee, petitioner's county agent, that the wheat was reseeded and no

question as to eligibility had been raised (R. 6–8, 10, 69–77, 78–80); they had received no regulations from petitioner and were not actually aware of any limitation on coverage until petitioner refused to make payment (R. 5, 14, 68); they had otherwise complied with all of the terms of the policy (R. 15–26, 27–29); they suffered a drastic loss (R. 14, 17, 19, 21–23, 52–55, 119–121); and that petitioner had refused to make any payment under the policy on the 400 acres of reseeded wheat (R. 45).

The trial court charged the jury that the county committee's knowledge of the facts constituted petitioner's knowledge (R. 92), that recovery could not be defeated "by proving the existence of facts which would render [the policy] void, where [petitioner] had full knowledge of such facts when the policy was issued" (R. 92), and that the provisions of the Wheat Crop Insurance Regulations, quoted above, would not bar respondents from recovering if they acted without knowledge of the regulations and in good faith (R. 94). The judge also instructed the jury that the petitioner, "in its business of insuring producers against loss of crops, and while acting within the scope of the authority given it by the Act of Congress, * * * is subject to the same rules of equity and fair dealing, and * * * enjoys the same benefits and privileges * * * as other persons or corporations engaged in the same business, no greater and no

733761—47——2

less" (R. 93).[1] On these instructions, the jury returned a verdict for respondents, in the amount of $3,960.30 (R. 133–134), the whole sum for which suit had been brought, and judgment was entered against petitioner in that amount (R. 134).

On appeal, the Supreme Court of Idaho affirmed the judgment (R. 140–143). It held that if petitioner were a private corporation there would be no doubt as to its liability, since such an insurer issuing a policy with full knowledge of invalidating facts may not defeat recovery, and the agent's knowledge is likewise the "knowledge of the principal in insurance cases" (R. 142). In answer to the contention that petitioner's status as a Government agency required the application of different rules, the court held that "we are not dealing directly with the government as such nor with a duly enacted law, but are dealing with a corporation created as an agency of the Department of Agriculture and with one of its regulations adopting a policy[2] with respect to the con-

[1] Petitioner requested instructions that the respondents were chargeable with notice of all provisions of the Wheat Crop Insurance Regulations (R. 103–104), and that the jury were not to consider the 400 acres of reseeded acreage (R. 105), but the trial judge refused both requests.

[2] The court also stated that "the regulation in question is not a law. The [petitioner] had authority to insure wheat crops for the years 1945, 1946 and 1947, but as a matter of policy determined not to insure in 1945 spring wheat planted on ground sown to fall wheat in 1944, and issued such regulation as a declaration of policy for the guidance of its officers and agents" (R. 143).

duct of its proprietary insurance business. The respondents purchased the insurance in question in good faith and thereafter suffered a loss. The [petitioner] through its agents had knowledge of the actual facts. It is now estopped from denying the validity of the insurance contract" (R. 143).

The Federal Crop Insurance Corporation, created by the Federal Crop Insurance Act, *infra*, pp. 21–38, is a wholly owned Government corporation which is an "agency of and within the Department of Agriculture."[3] Its function is to carry out the purposes of the Act, which Congress has declared to be "to promote the national welfare by alleviating the economic distress caused by crop failure due to drought and other causes, by maintaining the purchasing power of farmers, and by providing for stable supplies of agricultural commodities for domestic consumption and the orderly flow thereof in interstate commerce." To implement these purposes, the Corporation is authorized and empowered to insure farmers against loss in yields due to unavoidable causes, and to adjust and pay claims for losses. The

[3] Part V of the Reorganization Plan No. 3 of 1946 (pursuant to the Reorganization Act of 1945), effective July 16, 1946, 11 Fed. Reg. 7877, transferred the "administration of the programs of the Federal Crop Insurance Corporation and the Commodity Credit Corporation" to the Secretary of Agriculture to be "performed by him or, subject to his direction and control, by such officers and agencies of the Department of Agriculture as he shall designate."

Corporation is also endowed with general corporate powers, including those pertaining to contracting and the acquisition of property, and it may sue and be sued in its corporate name in any court of competent jurisdiction, State or Federal, except that suits against it for non-payment of indemnity must be brought "in the United States district court, or in any court of record of the State having general jurisdiction, sitting in the district or county in which the insured farm is located."

SPECIFICATION OF ERRORS TO BE URGED

The Supreme Court of Idaho erred:

1. In holding that petitioner was "equitably estopped" from defending against respondents' recovery on their Federal crop insurance contract.

2. In holding, despite the contrary provisions of the duly published Wheat Crop Insurance Regulations, that petitioner was bound and estopped by the Bonneville County Agricultural Conservation Committee's knowledge of the nature of respondents' crop.

3. In holding that petitioner is not fully an agency of the United States, and that it is conducting a "proprietary insurance business."

4. In holding that petitioner's regulation excluding spring wheat "reseeded on winter wheat acreage in the 1945 crop year" was not a "law"

but a "declaration of policy for the guidance of its officers and agents."

5. In holding, in effect, that petitioner is governed by the rules which would fix its liability if it were a private insurance corporation.

6. In failing to hold that respondents were barred, whether or not they had actual knowledge of the contents of the regulations, by the duly published Wheat Crop Insurance Regulations, which expressly formed part of their contract, and were therefore not entitled to recover for the loss of the excluded reseeded crop.

7. In failing to hold that petitioner was not bound on a contract unauthorized by its regulations, nor estopped to contest the contract's unauthorized coverage, whether or not the county committee had any notice or knowledge of the nature of respondents' crop.

8. In holding that respondents should recover for the loss of that part of their crop which constituted spring wheat reseeded on winter wheat acreage in the 1945 crop year.

9. In affirming the judgment of the District Court of the Ninth Judicial District of the State of Idaho in and for Bonneville County.

REASONS FOR GRANTING THE WRIT

The Supreme Court of Idaho applied to the petitioner, in what the court termed the "conduct of its proprietary insurance business" (R. 143),

the rules which would govern "if it were a private corporation" (R. 142), and held it "equitably estopped" (R. 143) from contesting the validity of an insurance policy issued by local authorities in plain contravention of published regulations denying all authority to issue such a policy. This ruling squarely conflicts with the principles governing the transactions of federal agencies, and threatens seriously to undermine the administration of the Federal crop insurance program.[4]

1. Under the rules normally applicable to those dealing with the Government, respondents would clearly have been denied recovery. The Application for Wheat Crop Insurance, which they signed, stated that the insurance contract would come into effect upon acceptance "by a duly authorized representative of the Corporation * * * provided the application has been submitted in accordance with the provisions of the Application and the applicable Wheat Crop Insurance

[4] The lower court's opinion does not make explicit whether it purports to apply state or federal rules of estoppel, but there is no doubt that this question, as well as every issue involving the construction and consequences of the contract, is one of federal law not controlled by the law of any state (*United States* v. *Allegheny County*, 322 U. S. 174, 183), and "local rules of estoppel will not be permitted to thwart the purposes of statutes of the United States." *Sola Electric Co.* v. *Jefferson Electric Co.*, 317 U. S. 173, 176; *Alpine MacGregor* v. *Westinghouse Electric & Mfg. Co.*, No. 28, this Term, decided January 6, 1947. The privilege of suing in a state court was first provided by the 1944 amendments to the original Act. Act of December 23, 1944, c. 713, Sec. 3, 58 Stat. 911, 91[illegible] Corporation and the insured." (R. 118.)

Regulations." (R. 113.)[5] Petitioner's letter of acceptance likewise informed respondents that "the insurance contract consists of the accepted application and the Wheat Crop Insurance Regulations, copies of which are enclosed" (R. 114). The regulations, to which reference was thus doubly made, clearly provided, first, that spring wheat reseeded on winter wheat acreage was not eligible for insurance, *infra,* p. 39, and, secondly, that the Bonneville County Agricultural Conservation Committee had no authority to change or waive any provision of the regulations, nor would notice to the committee or knowledge possessed by it "effect a waiver or change in any part of the insurance contract or estop the Corporation from asserting any right or power under such contract," *infra,* pp. 39–40.

These regulations, were duly issued under the express authority of the Act, *infra,* p. 37, in an effort to conform to the statutory direction to exclude insurance of losses due to "the failure of the producer to follow established good farming practices", *infra,* p. 28. They were properly published in the Federal Register on February 7, 1945, and accordingly, under the Federal Register Act, sufficient notice was thereby given "to any person

[5] The Application also explicitly stated: "It is further understood and agreed that the accepted application and the applicable Wheat Crop Insurance Regulations, including any amendments thereto, constitute the contract between the Corporation and the insured." (R. 113.)

subject thereto or affected thereby."* Cf. *Yakus* v. *United States,* 321 U. S. 414, 435. Such publication was expressly designed by Congress to bind all interested persons, such as respondents, in the same way that the Statutes at Large provide constructive notice of statutes. Cf. Griswold, *Government in Ignorance of the Law* (1934), 48 Harv. L. Rev. 198. Actual knowledge of the regulations is unnecessary, as the Supreme Court of Idaho has itself held (*Henderson* v. *Nixon,* 168 P. 2d 594, 597; *McFall* v. *Arkoosh,* 37 Idaho 243, 245), and the rules of the Federal Register Act govern state proceedings as well as federal. *Morrison* v. *Hutchins,* 158 Kan. 123. In these circumstances, neither respondents' lack of actual knowledge of the coverage limitations imposed by the regulations, nor the county committee's notice that respondents' crop was reseeded, would

* The jury's verdict determined that respondents did not actually know the contents of the regulations, and respondent A. A. Merrill testified that they never received a copy of the regulations (R. 5, 14, 68), but certainly the references in the Application and in petitioner's letter put them on notice of the regulations' existence. At least, respondents were "in duty bound" to read the documents they signed or received, *Frier* v. *Federal Crop Ins. Corp.*, 152 F. 2d 149, 150 (C. C. A. 5). The Department of Agriculture informs us that it was the regular office practice of all branch offices to enclose a copy of the Crop Insurance Regulations of the insured commodity with the returned accepted application, and that petitioner's Branch Office Procedures, issued March 23, 1945, required the transmission of the applicable regulations to the insured.

ordinarily prevent failure of the action. Of the defense of estoppel, "it is enough to say that the United States is neither bound nor estopped by acts of its officers or agents in entering into an arrangement or agreement to do or cause to be done what the law does not sanction or permit." *Utah Power & Light Co.* v. *United States*, 243 U. S. 389, 409; *Wilber National Bank* v. *United States*, 294 U. S. 120, 123–124; *United States* v. *City and County of San Francisco*, 310 U. S. 16, 32; *United States* v. *Stewart*, 311 U. S. 60, 70; *Felder* v. *Federal Crop Ins. Corp.*, 146 F. 2d 638, 640 (C. C. A. 4).[1]

2. Nothing in the nature of the Federal Crop Insurance Corporation, or of the Federal crop insurance program, requires these established rules to be displaced by those which would govern

[1] The lower court stated that "the [coverage] regulation in question is not a law" and was merely issued by petitioner "as a declaration of policy for the guidance of its officers and agents." (R. 143.) Since Congress specifically empowered petitioner and the Secretary of Agriculture "to issue such regulations as may be necessary to carry out the provisions" of the Act, *infra*, p. 37, it is plain that the regulation "has the force and effect of law." *Maryland Casualty Co.* v. *United States*, 251 U. S. 342, 349; *Felder* v. *Federal Crop Ins. Corp.*, *supra*, at 640. If the court meant to intimate, by its reference to the regulation as a "declaration of policy," that petitioner intended to permit coverage of reseeded areas if a county committee happened to approve such an application despite the coverage limitations, the explicit provisions of the regulation, especially the paragraph excluding waivers or changes by county committees, *infra*, pp. 39–40, proves the inaccuracy of such a reading.

liability if petitioner were a "private corporation." Petitioner is a wholly-owned Government corporation, administered by the Department of Agriculture with appropriated funds; the Act expressly creates it "an agency of and within the Department of Agriculture," *infra*, pp. 21–22, and it is therefore an agency and instrumentality of the United States (*Inland Waterways Corp.* v. *Young*, 309 U. S. 517, 524; *Cherry Cotton Mills, Inc.* v. *United States*, 327 U. S. 536, 539), performing proper governmental functions. *Pittman* v. *Home Owners' Loan Corp.*, 308 U. S. 21, 32–33; *Federal Land Bank* v. *Bismarck Lumber Co.*, 314 U. S. 95, 102–103. And it is settled that Congressional use of the corporate form does not indicate, in itself, an intention to subject the governmental agency to the rules of substantive law applicable to transactions of private business concerns. *Clallam County* v. *United States*, 263 U. S. 341; *Emergency Fleet Corp.* v. *Western Union*, 275 U. S. 415, 422–426; *Inland Waterways Corp.* v. *Young*, *supra*, at 524.

Nor does the program established by the Federal Crop Insurance Act embody any policy at variance with the principle which protects the Government from estoppel by unauthorized agents. The purpose of the Act is "to promote the national welfare by alleviating the economic distress caused by crop failures due to drought and other causes, by maintaining the purchasing power

of farmers, and by providing for stable supplies of agricultural commodities for domestic consumption and the orderly flow thereof in interstate commerce." Reduction in relief, emergency, and subsidy payments to farmers, as well as the development of non-dependent agricultural producers, have been the important goals. To attain these ends, and not for gain, the Government undertook to insure crops. Congress and the executive branch have repeatedly recognized that private sources cannot supply such protection and that only the Government could make it available. Cf. H. Doc. 150, 75th Cong., 1st Sess.: Report and Recommendations of the President's Committee on Crop Insurance, pp. 2–3, 11–12; H. Rep. No. 1592, 78th Cong., 2d Sess.; S. Rep. No. 1298, 78th Cong., 2d Sess. From the beginning, the program was recognized to be an experimental one;[*] losses were anticipated, at least in the first years, and a large excess of indemnity

[*] The 1938 statute was limited to wheat; the 1941 act extended coverage to cotton; the 1944 act provided for insurance of wheat, cotton, and flax and authorized experimental programs in limited areas for corn, tobacco, barley and other agricultural commodities. The Department of Agriculture Appropriation Act, 1944 (Act of July 12, 1943, 57 Stat. 392, 418) and the Department of Agriculture Appropriation Act, 1945 (Act of June 28, 1944, 58 Stat. 425, 451) withdrew all funds for insurance of crops planted subsequent to July 31, 1943; no crop insurance contracts were thereafter made, until the 1944 act (Act of December 23, 1944, 58 Stat. 918) authorized insurance of crops "planted for harvest in 1945," and the program was reinstated.

payments over premium receipts did actually occur. H. Rep. No. 1479, 75th Cong., 1st Sess., p. 2; Annual Report, Sec'y. Agr. 1943, pp. 231–235. Not only did the United States bear these losses, as it was expected to do, but Congress initially provided that petitioner need not pay its own costs of operation out of income. The basic statute authorized annual appropriations of $6,000,000 for operating and administrative costs (Act of February 16, 1938, c. 30, Title V, Sec. 516, 52 Stat. 72, 77, 7 U. S. C. 1516), and in 1941 this sum was increased to $12,000,000. Act of June 21, 1941, c. 214, Sec. 8, 55 Stat. 255, 256, 7 U. S. C., Supp. V, 1516. These facts contradict any assumed general policy of treating crop insurance as solely "commercial," or petitioner's functions as a "proprietary insurance business" outside the rules generally applied to governmental activities. Cf. *White* v. *United States*, 270 U. S. 175, 180; *United States* v. *Worley*, 281 U. S. 339, 342–344.*

* This Court and lower federal courts have frequently applied rules normally applicable to governmental transactions, but not to private insurance dealings, in actions on the various forms of veterans' insurance policies. *United States* v. *Worley*, *supra* (interest); *Munro* v. *United States*, 303 U. S. 36 (estoppel; statute of limitations); *Birmingham* v. *United States*, 4 F. 2d 508, 509 (C. C. A. 8) (estoppel); *United States* v. *Lyke*, 19 F. 2d 876, 877 (C. C. A. 9) (interest); *United States* v. *Loveland*, 25 F. 2d 447 (C. C. A. 3) reversed on other grounds, 278 U. S. 665 (estoppel); *Crawford* v. *United States*, 40 F. 2d 199, 200 (C. C. A. 2) (estoppel); *Wilber Nat. Bank* v. *United States*, 69 F. 2d 526 (C. C. A. 2) (estoppel), affirmed on other grounds, 294 U. S.

3. A conflict in principle, if not in actual holding, exists between the instant case and *Felder* v. *Federal Crop Ins. Corp.*, 146 F. 2d 638 (C. C. A. 4), in which the insured was denied recovery because of his untimely filing of proof of loss. There, the Circuit Court of Appeals for the Fourth Circuit saw no barrier to the application of the rules which normally govern Government contracts, including the inapplicability of estoppel, and held the insured strictly to the terms of the crop insurance regulations.

4. The question presented is one of general importance which should be settled by this Court. If, in reliance upon the decision below, the myriad common-law rules applicable to private insurance transactions should be applied to petitioner's activities by other state courts, the provisions of the Federal regulations would thereby be evaded and the Act's administration hampered. More immediately, the decision below may necessitate drastic changes in the administration of the Federal crop insurance program. To avoid results such as that attained here, the present simplified system of providing insurance, by a combination of short application form with a copy of the

120; *United States* v. *Valdza*, 81 F. 2d 615, 617 (C. C. A. 6) (limitations); *Coleman* v. *United States*, 100 F. 2d 903 (C. C. A. 6) (limitations); *Bean* v. *United States*, 7 F. 2d 393, 396 (D. Kans.); *Sternfeld* v. *United States*, 32 F. 2d 789, 790 (N. D. N. Y.) (estoppel); *Rodgers* v. *United States*, 66 F. Supp. 663, 665 (E. D. Pa.) (waiver).

applicable regulations will probably have to give place to the cumbersome preparation and issuance of a lengthly policy similar to that used by private companies in other insurance fields. The present participation of county committees in the sale of crop insurance may also have to be modified in order to prevent unauthorized, but binding, modifications and waivers of contract provisions. The use of such committees in other programs administered by the Department of Agriculture may also be affected. The Secretary of Agriculture advises that these considerations are very important to the proper performance of the functions for which his Department is responsible, and clarification of the status of Federal crop insurance contracts is therefore necessary. Furthermore, the lower court's disregard of the provisions of Section 7 of the Federal Register Act, *infra*, pp. 38-39, threatens the integrity of the system of publication and notice established by that Act.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

GEORGE T. WASHINGTON,
Acting Solicitor General.

FEBRUARY 1947.

APPENDIX

1. The Federal Crop Insurance Act (Act of February 16, 1938, c. 30, Title V, 52 Stat. 72, as amended by the Act of June 21, 1941, c. 214, 55 Stat. 255, and the Act of December 23, 1944, c. 713, 58 Stat. 918, 7 U. S. C. 1501–1518, and 7 U. S. C., Supp. V, 1502, 1506 (h), 1508, 1516, 1518, and 1519), provides as follows:

SEC. 501. This title may be cited as the "Federal Crop Insurance Act." Except as otherwise expressly provided the provisions in titles I to IV, inclusive, shall not not apply with respect to this title, and the term "Act" wherever it appears in such titles shall not be construed to include this title. (7 U. S. C. 1940 ed. 1501, 52 Stat. 72.)

Declaration of Purpose

SEC. 502. It is the purpose of this title to promote the national welfare by alleviating the economic distress caused by crop failures due to drought and other causes, by maintaining the purchasing power of farmers, and by providing for stable supplies of agricultural commodities for domestic consumption and the orderly flow thereof in interstate commerce. (7 U. S. C. 1940 ed. Supp. V, 1502, 52 Stat. 72, 55 Stat. 255.)

SEC. 503. To carry out the purposes of this title, there is hereby created as an agency of and within the Department of

Agriculture a body corporate with the name "Federal Crop Insurance Corporation" (herein called the Corporation). The principal office of the Corporation shall be located in the District of Columbia, but there may be established agencies or branch offices elsewhere in the United States under rules and regulations prescribed by the Board of Directors. (7 U. S. C. 1940 ed. 1503, 52 Stat. 72.)

Capital Stock

SEC. 504. (a) The Corporation shall have a capital stock of $100,000,000 subscribed by the United States of America, payment for which shall, with the approval of the Secretary of Agriculture, be subject to call in whole or in part by the Board of Directors of the Corporation.

Any impairment of the capital stock described in this subsection shall be restored only out of operating profits of the Corporation. (7 U. S. C. 1940 ed. 1504 (a), 52 Stat. 72.)

(b) There is hereby authorized to be appropriated not more than $100,000,000 for the purpose of subscribing to said stock. No part of such sum shall be available prior to July 1, 1938. The appropriation for such purpose for the fiscal year ending June 30, 1939, shall not exceed $20,000,000 and shall be made only out of the unexpended balances for the fiscal year ending June 30, 1938, of the sums appropriated pursuant to section 15 of the Soil Conservation and Domestic Allotment Act, as amended. (7 U. S. C. 1940 ed. 1504 (b), 52 Stat. 72.)

(c) Receipts for payments by the United States of America for or on account of

such stock shall be issued by the Corporation to the Secretary of the Treasury and shall be evidence of the stock ownership by the United States of America. (7 U. S. C. 1940 ed. 1504 (c), 52 Stat. 72.)

Management of Corporation

SEC. 505. (a) The management of the Corporation shall be vested in a Board of Directors (hereinafter called the "Board") subject to the general supervision of the Secretary of Agriculture. The Board shall consist of three persons employed in the Department of Agriculture who shall be appointed by and hold office at the pleasure of the Secretary of Agriculture. (7 U. S. C. 1940 ed. 1505 (a), 52 Stat. 72.)

(b) Vacancies in the Board so long as there shall be two members in office shall not impair the powers of the Board to execute the functions of the Corporation, and two of the members in office shall constitute a quorum for the transaction of the business of the Board. (7 U. S. C. 1940 ed. 1505 (b), 52 Stat. 72.)

(c) The Directors of the Corporation appointed as hereinbefore provided shall receive no additional compensation for their services as such directors but may be allowed actual necessary traveling and subsistence expenses when engaged in business of the Corporation outside of the District of Columbia. (7 U. S. C. 1940 ed. 1505 (c), 52 Stat. 73).

(d) The Board shall select, subject to the approval of the Secretary of Agriculture, a manager, who shall be the executive officer of the Corporation with such power and authority as may be conferred upon

him by the Board. (7 U. S. C. 1940 ed. 1505 (d), 52 Stat. 73.)

General Powers

SEC. 506. The Corporation—

(a) shall have succession in its corporate name; (7 U. S. C. 1940 ed. 1506 (a), 52 Stat. 73.)

(b) may adopt, alter, and use a corporate seal, which shall be judicially noticed; (7 U. S. C. 1940 ed. 1506 (b), 52 Stat. 73.)

(c) may make contracts and purchase or lease and hold such real and personal property as it deems necessary or convenient in the transaction of its business, and may dispose of such property held by it upon such terms as it deems appropriate; (7 U. S. C. 1940 ed. 1506, (c), 52 Stat. 73.)

(d) subject to the provisions of section 508 (c), may sue and be sued in its corporate name in any court of competent jurisdiction, State or Federal: *Provided,* That no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Corporation or its property; (7 U. S. C. 1940 ed. 1506 (d), 52 Stat. 73.)

(e) may adopt, amend, and repeal by-laws, rules, and regulations governing the manner in which its business may be conducted and the powers granted to it by law may be exercised and enjoyed; (7 U. S. C. 1940 ed. 1506 (e), 52 Stat. 73.)

(f) shall be entitled to the free use of the United States mails in the same manner as the other executive agencies of the Government; (7 U. S. C. 1940 ed. 1506 (f), 52 Stat. 73.)

(g) with the consent of any board, commission, independent establishment, or

executive department of the Government, including any field service thereof, may avail itself of the use of information, services, facilities, officials, and employees thereof in carrying out the provisions of this title; (7 U. S. C. 1940 ed. 1506 (g), 52 Stat. 73.)

(h) may conduct researches, surveys, and investigations relating to crop insurance, and preparatory to the application of the Act to other basic commodities when so provided by law, shall assemble data relative to field corn, for the purpose of establishing a satisfactory actuarial basis for such commodity; (7 U. S. C. 1940 ed. Supp. V, 1506 (h), 52 Stat. 73, 55 Stat. 255.)

(i) shall determine the character and necessity for its expenditures under this title and the manner in which they shall be incurred, allowed, and paid, without regard to the provisions of any other laws governing the expenditure of public funds and such determinations shall be final and conclusive upon all other officers of the Government; and (7 U. S. C. 1940 ed. 1506 (i), 52 Stat. 73.)

(j) shall have such powers as may be necessary or appropriate for the exercise of the powers herein specifically conferred upon the Corporation and all such incidental powers as are customary in corporations generally. (7 U. S. C. 1940 ed. 1506 (j), 52 Stat. 73.)

Personnel

SEC. 507. (a) The Secretary shall appoint such officers and employees as may be necessary for the transaction of the business of the Corporation, which appointments may be made without regard to the

civil-service laws and regulations, fix their compensation in accordance with the provisions of the Classification Act of 1923, as amended, define their authority and duties, delegate to them such of the powers vested in the Corporation as he may determine, require bond of such of them as he may designate, and fix the penalties and pay the premiums of such bonds. The appointment of officials and the selection of employees by the Secretary shall be made only on the basis of merit and efficiency. (7 U. S. C. 1940 ed. 1507 (a), 52 Stat. 73.)

(b) Insofar as applicable, the benefits of the Act entitled "An Act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes," approved September 7, 1916, as amended, shall extend to persons given employment under the provisions of this title, including the employees of the committees and associations referred to in subsection (c) of this section and the members of such committees. (7 U. S. C. 1940 ed., 1507 (b), 52 Stat. 74.)

(c) The Board may establish or utilize committees or associations of producers in the administration of this title and make payments to such committees or associations to cover the estimated administrative expenses to be incurred by them in cooperating in carrying out this title and may provide that all or part of such estimated expenses may be included in the insurance premiums provided for in this title. (7 U. S. C. 1940 ed. 1507 (c), 52 Stat. 74.)

(d) The Secretary of Agriculture may allot to bureaus and offices of the Department of Agriculture or transfer to such

other agencies of the State and Federal Governments as he may request to assist in carrying out this title any funds made available pursuant to the provisions of section 516 of this Act. (7 U. S. C. 1940 ed. 1507 (d), 52 Stat. 74.)

(e) In carrying out the provisions of this title the Board may, in its discretion, utilize producer-owned and producer-controlled cooperative associations. (7 U. S. C. 1940 ed., 1507 (e), 52 Stat. 74.)

Crop Insurance

SEC. 508. To carry out the purposes of this title the Corporation is authorized and empowered—

(a) (1) Commencing with the wheat, cotton, and flax crops planted for harvest in 1945, to insure, upon such terms and conditions not inconsistent with the provisions of this title as it may determine, producers of wheat, cotton, and flax against loss in yields due to unavoidable causes, including drought, flood, hail, wind, frost, winter-kill, lightning, fire, excessive rain, snow, wildlife, hurricane, tornado, insect infestation, plant disease, and such other unavoidable causes as may be determined by the Board. Such insurance shall cover a percentage to be determined by the Board not in excess of 75 per centum of the recorded or appraised average yield of such commodities on the insured farm for a representative period subject to such adjustments as the Board may prescribe to the end that the average yields fixed for farms in the same area, which are subject to the same conditions, may be fair and just. Such insurance shall not cover losses due to the neglect or malfeasance of the producer, or to the fail-

ure of the producer to reseed to the same crop in areas and under circumstances where it is customary to so reseed, or to the failure of the producer to follow established good farming practices. Insurance shall not be provided in any county unless written applications therefor are filed covering at least fifty farms or one-third of the farms normally producing the agricultural commodities authorized to be insured, except that insurance may be provided for producers on farms situated in a local producing area bordering on a county with a crop-insurance program. The Board may limit insurance in any county or area, or on any farm, on the basis of the insurance risk involved.

(2) For the purpose of determining the most practical plan, terms, and conditions of insurance with respect to corn, dry beans, oats, barley, rye, tobacco, rice, peanuts, soybeans, sugar beets, sugarcane, timber and forests, potatoes and other vegetables, citrus and other fruits, tame hay, and any other agricultural commodity, if sufficient actuarial data are available, as determined by the Board, to insure upon such terms and conditions not inconsistent with the provisions of this title as it may determine, producers of such agricultural commodities against loss due to the unavoidable causes covered in paragraph (1) of this subsection: *Provided,* That such insurance shall be limited in 1945 to corn and tobacco and to not more than three additional crops for each year thereafter. Insurance provided for any agricultural commodity under this paragraph shall be subject to the limitations and conditions provided in paragraph (1) of this subsec-

tion, shall be for a period of not more than three years, and shall be limited to producers in not to exceed twenty counties selected by the Board as representative of the several areas where the agricultural commodity is normally produced: *Provided, however,* That such insurance may cover a percentage not in excess of 75 per centum of the investment in the crop, as determined by the Board. The Corporation shall report annually to the Congress the results of its operations as to each commodity under this paragraph. (7 U. S. C. 1940 ed. Supp. V, 1508 (a), 52 Stat. 74, 835, 55 Stat. 255, 58 Stat. 918.)

(b) To fix adequate premiums for insurance in the agricultural commodity or in cash, at such rates as the Board deems sufficient to cover claims for crop losses on such insurance and to establish as expeditiously as possible a reasonable reserve against unforeseen losses. Such premiums shall be collected at such time or times, or shall be secured in such manner, as the Board may determine: *Provided,* That, after the crop year of 1949, not more than a sum equivalent to 25 per centum of the premiums collected in the preceding year (beginning calculation of premiums collected in the crop year of 1949) shall be used for administrative expenses in any current operating year. (7 U. S. C. 1940 ed. Supp. V, 1508 (b), 52 Stat. 74, 55 Stat. 255, 58 Stat. 918.)

(c) To adjust and pay claims for losses in the agricultural commodity or in cash, under rules prescribed by the Board: *Provided, however,* That, after the crop year of 1949, if the total amount of accumulated claims for losses on any agricultural com-

modity for any year exceeds the total amount of the premiums collected less the accumulated premium reserves of the Corporation with respect to any such commodity, (which reserves, after the crop year of 1948, shall not be less than 10 per centum of the premiums collected on such commodity), such claims shall be paid on a pro rata reduced basis. The Corporation shall provide for the posting annually in each county at the county courthouse of a list of indemnities paid for losses on farms in such county. In the event that any claim for indemnity under the provisions of this title is denied by the Corporation, an action on such claim may be brought against the Corporation in the United States district court, or in any court of record of the State having general jurisdiction, sitting in the district or county in which the insured farm is located, and jurisdiction is hereby conferred upon such district courts to determine such controversies without regard to the amount in controversy: *Provided,* That no suit on such claim shall be allowed under this section unless the same shall have been brought within one year after the date when notice of denial of the claim is mailed to and received by the claimant. (7 U. S. C. 1940 ed. Supp. V, 1508 (c), 52 Stat. 74, 55 Stat. 255, 58 Stat. 918.)

(d) From time to time, in such manner and through such agencies as the Board may determine, to purchase, handle, store, insure, provide storage facilities for, and sell the agricultural commodity, and pay any expenses incidental thereto, it being the intent of this provision, however, that, insofar as practicable, the Corporation shall purchase the agricultural commodity

only at the rate and to a total amount equal to the payment of premiums in cash by farmers or to replace promptly the agricultural commodity sold to prevent deterioration; and shall sell the agricultural commodity only to the extent necessary to cover payments of indemnities and to prevent deterioration: *Provided, however,* That nothing in this section shall prevent prompt offset purchases and sales of the agricultural commodity for convenience in handling. Nothing in this section shall prevent the Corporation from accepting, for the payment of premiums, notes payable in the commodity insured, or the cash equivalent, upon such security as may be determined pursuant to subsection (b) of this section, and from purchasing the quantity of the commodity represented by any of such notes not paid at maturity. The restriction on the purchase and sale of the agricultural commodity provided in this section shall be made a part of any crop insurance agreement made under this title. Notwithstanding any provision of this title, there shall be no limitation upon the legal or equitable remedies available to the insured to enforce against the Corporation the foregoing restriction with respect to purchases and sales of the agricultural commodity. (7 U. S. C. 1940 ed. Supp. V, 1508 (d), 52 Stat. 75, 55 Stat. 255, 256.)

(e) In connection with insurance upon yields of cotton, to include provision for additional premium and indemnity in terms of lint cotton to cover loss of cottonseed, such additional premium and indemnity to be determined on the basis of the average relationship between returns from cottonseed and returns from lint cotton

for the same period of years as that used for computing yields and premium rates. (7 U. S. C. 1940 ed. Supp. V, 1508 (e), 55 Stat. 256.)

Indemnities Exempt from Levy

SEC. 509. Claims for indemnities under this title shall not be liable to attachment, levy, garnishment, or any other legal process before payment to the insured or to deduction on account of the indebtedness of the insured or his estate to the United States except claims of the United States or the Corporation arising under this title. (7 U. S. C. 1940 ed. 1509, 52 Stat. 75.)

Deposit of Funds

SEC. 510. All money of the Corporation not otherwise employed may be deposited with the Treasurer of the United States or in any bank approved by the Secretary of the Treasury, subject to withdrawal by the Corporation at any time, or with the approval of the Secretary of the Treasury may be invested in obligations of the United States or in obligations guaranteed as to principal and interest by the United States. Subject to the approval of the Secretary of the Treasury, the Federal Reserve banks are hereby authorized and directed to act as depositories, custodians, and fiscal agents for the Corporation in the performance of its powers conferred by this title. (7 U. S. C. 1940 ed. 1510, 52 Stat. 75.)

Tax Exemption

SEC. 511. The Corporation, including its franchise, its capital, reserves, and surplus, and its income and property, shall be ex-

empt from all taxation now or hereafter imposed by the United States or by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority. (7 U. S. C. 1940 ed. 1511, 52 Stat. 75.)

Fiscal Agent of Government

SEC. 512. When designated for that purpose by the Secretary of the Treasury, the Corporation shall be a depository of public money, except receipts from customs, under such regulations as may be prescribed by said Secretary; and it may also be employed as a financial agent of the Government; and it shall perform all such reasonable duties, as a depository of public money and financial agent of the Government, as may be required of it. (7 U. S. C. 1940 ed. 1512, 52 Stat. 75.)

Accounting by Corporation

SEC. 513. The Corporation shall at all times maintain complete and accurate books of account and shall file annually with the Secretary of Agriculture a complete report as to the business of the Corporation. The financial transactions of the Corporation shall be audited at least once each year by the General Accounting Office for the sole purpose of making a report to Congress, together with such recommendations as the Comptroller General of the United States may deem advisable: *Provided*, That such report shall not be made until the Corporation shall have had reasonable opportunity to examine the exceptions and criticisms of the Comptroller General or the General Accounting Office, to point out errors therein, explain or answer the same, and

to file a statement which shall be submitted by the Comptroller General with his report. (7 U. S. C. 1940 ed. 1513, 52 Stat. 76.)

Crimes and Offenses

SEC. 514. (a) Whoever makes any statement knowing it to be false, or whoever willfully overvalues any security, for the purpose of influencing in any way the action of the Corporation, or for the purpose of obtaining for himself or another money, property, or anything of value, under this title, shall be punished by a fine of not more than $5,000 or by imprisonment for not more than two years, or both. (7 U. S. C. 1940 ed. 1514 (a), 52 Stat. 76.)

(b) No person shall, while acting in any official capacity in the administration of this title, speculate, directly or indirectly, in any agricultural commodity or product thereof, to which this title applies, or in contracts relating thereto, or in the stock or membership interests of any association or corporation engaged in handling, processing, or disposing of any such commodity or product. Any person violating this subsection shall upon conviction thereof be fined not more than $10,000 or imprisoned not more than two years, or both. (7 U. S. C. 1940 ed. 1514 (b), 52 Stat. 76.)

(c) Whoever, being connected in any capacity with the Corporation, (1) embezzles, abstracts, purloins, or willfully misapplies any moneys, funds, securities, or other things of value, whether belonging to the Corporation or pledged or otherwise entrusted to it; or (2) with intent to defraud the Corporation, or any other body politic or corporate, or any individual, or to deceive any officer, auditor, or examiner of

the Corporation, makes any false entry in any book, report, or statement of, or to, the Corporation or draws any order, or issues, puts forth, or assigns any note or other obligation or draft, mortgage, judgment, or decree thereof; or (3) with intent to defraud the Corporation, participates or shares in or receives directly or indirectly any money, profit, property, or benefits through any transaction, loan, commission, contract, or any other act of the Corporation, shall be punished by a fine of not more than $10,000 or by imprisonment for not more than five years, or both. (7 U. S. C. 1940 ed. 1514 (c), 52 Stat. 76.)

(d) Whoever willfully shall conceal, remove, dispose of, or convert to his own use or to that of another, any property mortgaged or pledged to, or held by, the Corporation, as security for any obligation, shall be punished by a fine of not more than $5,000 or by imprisonment for not more than two years, or both. (7 U. S. C. 1940 ed. 1514 (d), 52 Stat. 76.)

(e) Whoever conspires with another to accomplish any of the acts made unlawful by the preceding provisions of this section shall, on conviction thereof, be subject to the same fine or imprisonment, or both, as is applicable in the case of conviction for doing such unlawful act. (7 U. S. C. 1940 ed. 1514 (e), 52 Stat. 77.)

(f) The provisions of sections 112, 113, 114, 115, 116, and 117 of the Criminal Code of the United States (U. S. C., title 18, secs. 202 to 207, inclusive) insofar as applicable, are extended to apply to contracts or agreements with the Corporation under this title: *Provided, however,* That the provisions of section 3741 of the Revised Statutes (U. S. C., title 41, sec. 22) and sections

114 and 115 of the Criminal Code of the United States shall not apply to any crop-insurance agreements made under this title. (7 U. S. C. 1940 ed. 1514 (f), 52 Stat. 77.)

Advisory Committee

SEC. 515. The Secretary of Agriculture is authorized to appoint from time to time an advisory committee, consisting of not more than five members experienced in agricultural pursuits and appointed with due consideration to their geographical distribution, to advise the Corporation with respect to carrying out the purposes of this title. The compensation of the members of such committee shall be determined by the Board but shall not exceed $10 per day each while actually employed and actual necessary traveling and subsistence expenses, or a per diem allowance in lieu thereof. (7 U. S. C. 1940 ed. 1515, 52 Stat. 77.)

Appropriations and Regulations

SEC. 516. (a) There are hereby authorized to be appropriated such sums, not in excess of $12,000,000 for each fiscal year beginning after June 30, 1938, as may be necessary to cover the operating and administrative costs of the Corporation, which shall be allotted to the Corporation in such amounts and at such time or times as the Secretary of Agriculture may determine: *Provided,* That expenses in connection with the purchase, transportation, handling, or sale of the agricultural commodity may be considered by the Corporation as being non-administrative or nonoperating expenses. For the fiscal year ending June 30, 1939, the appropriation authorized under this subsection is authorized to be made only

out of the unexpended balances for the fiscal year ending June 30, 1938, of the sums appropriated pursuant to section 15 of the Soil Conservation and Domestic Allotment Act, as amended. (7 U. S. C. 1940 ed. Supp. V, 1516 (a), 52 Stat. 77, 55 Stat. 255, 256.)

(b) The Secretary and the Corporation, resectively, are authorized to issue such regulations as may be necessary to carry out the provisions of this title. (7 U. S. C. 1940 ed. 1516 (b), 52 Stat. 77.)

Separability

SEC. 517. The sections of this title and subdivisions of sections are hereby declared to be separable, and in the event any one or more sections or parts of the same of this title be held to be unconstitutional, the same shall not affect the validity of other sections or parts of sections of this title. (7 U. S. C. 1940 ed. 1517, 52 Stat. 77.)

SEC. 518. "Agricultural Commodity," as used in this title, means wheat, cotton, flax, corn, dry beans, oats, barley, rye, tobacco, rice, peanuts, soybeans, sugar beets, sugarcane, timber and forests, potatoes and other vegetables, citrus and other fruits, tame hay, or any other agricultural commodity determined by the Board pursuant to subsection (a) (2) of section 508 of this title, or any one or more of such commodities, as the context may indicate. (7 U. S. C. 1940 ed. Supp. V, 1518, 55 Stat. 256, 58 Stat. 919.)

Right to Amend

SEC. 519. The right to alter, amend, or repeal this title is hereby reserved. (7

U. S. C. 1940 ed. Supp. V, 1519, 52 Stat. 77, 55 Stat. 256.)

2. Section 7 of the Federal Register Act (Act of July 26, 1935, c. 417, sec. 7, 49 Stat. 500, 502, 44 U. S. C. 307) provides as follows:

> No document required under section 5 (a) to be published in the Federal Register shall be valid as against any person who has not had actual knowledge thereof until the duplicate originals or certified copies of the document shall have been filed with the Division and a copy made available for public inspection as provided in section 2; and, unless otherwise specifically provided by statute, such filing of any document, required or authorized to be published under section 5, shall, except in cases where notice by publication is insufficient in law, be sufficient to give notice of the contents of such document to any person subject thereto or affected thereby. The publication in the Federal Register of any document shall create a rebuttable presumption (a) that it was duly issued, prescribed, or promulgated; (b) that it was duly filed with the Division and made available for public inspection at the day and hour stated in the printed notation; (c) that the copy contained in the Federal Register is a true copy of the original; and, (d) that all requirements of this Act and the regulations prescribed hereunder relative to such document have been complied with. The contents of the Federal Register shall be judicially noticed and, without prejudice to any other mode of citation, may be cited by volume and page number.

3. The Wheat Crop Insurance Regulations, approved February 5, 1945, provide in part as follows (10 Fed. Reg. 1585 *et seq.*, February 7, 1945):

Part 414—WHEAT CROP INSURANCE REGULATIONS

* * * * *

SEC. 414.1 *Availability of wheat crop insurance.*—(a) Wheat crop insurance under contracts covering the 1945, 1946 and 1947 crop years will be provided in accordance with the regulations in this part. For the 1945 crop year, however, no insurance will be provided on winter wheat * * * (10 Fed. Reg. 1586, 10 F. R. 10343).

* * * * *

SEC. 414.37 *Meaning of terms.*—For the purpose of the Wheat Crop Insurance Program, the term:

* * * * *

(v) "Wheat crop" means all seeded spring and winter wheat, including volunteer wheat, other volunteer small grains and vetch, growing with the seeded wheat crop, and including small grains seeded with the growing wheat crop on acreage not released by the Corporation. The term wheat crop shall not include volunteer wheat not growing with the seeded wheat crop, wheat seeded with a mixture of flax or other small grains or vetch, true type winter wheat seeded in the spring, winter wheat in the 1945 crop year, and spring wheat which has been reseeded on winter wheat acreage in the 1945 crop year. (10 Fed Reg. 1591).

* * * * *

SEC. 414.42. *Modification of insurance contract.*—No notice to any county com-

mittee or representative of the Corporation or knowledge possessed by any such county committee or representative or by any other person shall be held to effect a waiver of or change in any part of the insurance contract or to estop the Corporation from asserting any right or power under such contract; nor shall the terms of such contract be waived or changed except as authorized in writing by a duly authorized officer or representative of the Corporation; nor shall any provision or condition of the insurance contract or any forfeiture be held to be waived by any delay or omission by the Corporation in exercising its rights and powers thereunder or by any requirement, act, or proceeding, on the part of the Corporation or of its representatives, relating to appraisal or to any examination herein provided for. (10 Fed. Reg. 1592).

* * * * *

U. S. GOVERNMENT PRINTING OFFICE: 1947